

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

<b>MELVIN SORTO,</b>	:	
	:	
<b>Plaintiff</b>	:	<b>CIVIL ACTION NO. 3:22-798</b>
	:	
<b>v.</b>	:	<b>(JUDGE MANNION)</b>
	:	
<b>UNITED STATES, <i>et al.</i>,</b>	:	
	:	
<b>Defendants</b>	:	

**ORDER**

Pending before the court is the October 11, 2022, report of Chief Magistrate Judge Karoline Mehalchick, which recommends that the *pro se* plaintiff Melvin Sorto's complaint, (Doc. 1), be dismissed without prejudice. (Doc. 10). No objections have been filed by any party to Judge Mehalchick's report and the time within which they were due has lapsed.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; *see also Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (M.D. Pa. 2010) (citing *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). In any

event, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

Since the report correctly states the procedural and factual background of this case, it will not be repeated herein. Judge Mehalchick determined in her report that this action should be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because of Plaintiff's failure to prosecute. Specifically, Plaintiff failed to submit payment of the applicable filing and administrative fees, and he failed to respond to Judge Mehalchick's order, (Doc. 9), directing Plaintiff to show cause as to why his case should not be dismissed for failing to pay the filing fee and failing to prosecute this action. As of this day, Plaintiff has still not responded or otherwise prosecuted this action. As Judge Mehalchick correctly articulated in her report, Rule 41(b) provides that an action may be involuntarily dismissed "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order," and the Rule permits *sua sponte* dismissal by the court. See *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–31 (1962); *Hewlett v. Davis*, 844 F.2d 109, 114 (3d Cir. 1988).

In recommending dismissal, Chief Judge Mehalchick marched through the so-called *Poulis* factors which guide a district court's discretion in dismissing a case for failure to prosecute under Rule 41(b) of the Federal Rules of Civil Procedure. See *Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984). With respect to each of the six factors, Judge Mehalchick found: (1) The failure to respond to the motions is entirely attributable to Plaintiff, *pro se*, who has repeatedly failed to abide by court orders or otherwise prosecute this action; (2) The defendants are prejudiced by Plaintiff's continuing inaction which frustrates and delays the resolution of this action; (3) There is a consistent history of dilatoriness on Plaintiff's part; (4) Plaintiff's actions reflect a willful disregard for this case and the court's instructions; (5) This case which involves a *pro se* litigant who will not comply with rules or court orders is not one where lesser sanctions than dismissal would be an effective alternative; and (6) Even if Plaintiff's claims had merit, consideration of this factor cannot save his case because he is now wholly noncompliant with his obligations as a litigant. As such, Judge Mehalchick found that the *Poulis* factors heavily favor dismissal of this lawsuit.

The court has considered the findings in Judge Mehalchick's report and finds no clear error of law. Moreover, the court agrees with the sound reasoning which has led Judge Mehalchick to the conclusions in her report.

As such, the report and recommendation will be adopted in its entirety as the opinion of the court.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

- (1) The report and recommendation of Judge Mehalchick, (Doc. 10), is ADOPTED IN ITS ENTIRETY AS THE RULING OF THE COURT.**
- (2) Plaintiff's Complaint, (Doc. 1), is DISMISSED without prejudice.**
- (3) The Clerk of Court is directed to CLOSE THIS CASE.**

  
**MALACHY E. MANNION**  
**United States District Judge**

**DATE: January 18, 2023**

22-798-01